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Functions of the Permanent Mandates Commission

WHEN Germany's former colonies were taken over by the Supreme Allied Council as a result of the World War, they were not annexed to the empires of the victorious powers, as originally intended, in the form of colonies, protectorates or dependencies. In deference to current opinion on the subject of exploiting backward peoples they were placed instead under the guardianship of various advanced nations which by reason of their resources, their experience or their geographical position could undertake responsibility for the proper development of the mandated territories. The well-being of these mandated territories, described in the League Covenant as "a sacred trust of civilization," was secured by the terms of Article 22 of the Covenant and guaranteed by the League of Nations, which undertook to supervise their actual administration. Thus for a little over five years the Commission constituted by the League "to receive and examine the annual reports of the mandatories and to advise the Council on all matters relating to the observance of the mandates" has been performing its function of supervising the

mandatory administrations and has been making definite recommendations to the League Council for appropriate action.

These five years of an experiment new in the world's history have recently become the subject of particularly critical review and examination. It was the Permanent Mandates Commission itself which precipitated the current discussions of its function and its record when in September, 1926, it asked the League Council: (a) to give its opinion as to whether the Commission should grant audience to petitioners in exceptional cases; (b) to request the mandatory powers to submit in future fuller accounts of their administration to the Mandates Commission. Objections to these suggestions were immediately offered by the mandatory powers. As a result a crisis has been reached in the relations of the foreign offices of various mandatory powers and the Mandates Commission, with whom they must continue to have dealings as long as the mandate system continues and they themselves still accept responsibility for administering mandated territories.

In effect, the question now at issue is whether the Mandates Commission has overreached the mark set by the League of Nations which constituted it. It is not the purpose of the present study to issue a pronouncement on the subject, but rather to review the manner in which the issue came to be raised, since its settlement in one way or another by the competent authorities cannot but have important results on the future theory and practice of trusteeship in the administration of undeveloped countries.

The experimental character of the mandate system as a whole is typified in the gradual evolution of the Mandates Commission itself. When that body was constituted in 1921, the League had little knowledge of what demands would be made upon it; consequently the rules of procedure originally drawn up for it by the Council served merely as a point of departure in its task of receiving and examining the annual reports of the mandatories and of advising the Council on all matters relating to the observance of the mandates.

Consequently a good portion of each session since 1921 has been devoted to discussing methods of procedure. The methods now applied are much more fully developed than they were even so recently as in 1923 or 1924. And still the process of readjustment goes on. The two important proposals made to the Council last September constituted only a part of this evolutionary process.

THE COMMISSION'S SOURCES OF INFORMATION

The question of whether or not petitioners should be allowed the right of audience by the Mandates Commission was one which had often been discussed at sessions of that body, but was never formally submitted to the Council until last year.

Hitherto in carrying out its work the Commission has had four regular sources of information concerning the administration of mandated territories—the official report of the mandatory power*; the state-

ments of the accredited representative of the mandatory power in attendance at the appropriate meetings of the Commission; written petitions from inhabitants of the mandated territory or from interested persons or groups living outside the mandated territory, together with the comments of the mandatory powers thereon; and unofficial information of all kinds carefully selected by the Secretariat in the form of news clippings, interviews, reports of Parliamentary debates, etc. In addition, members of the Commission have frequently been interviewed unofficially by residents of mandated territories or persons having special interests there.

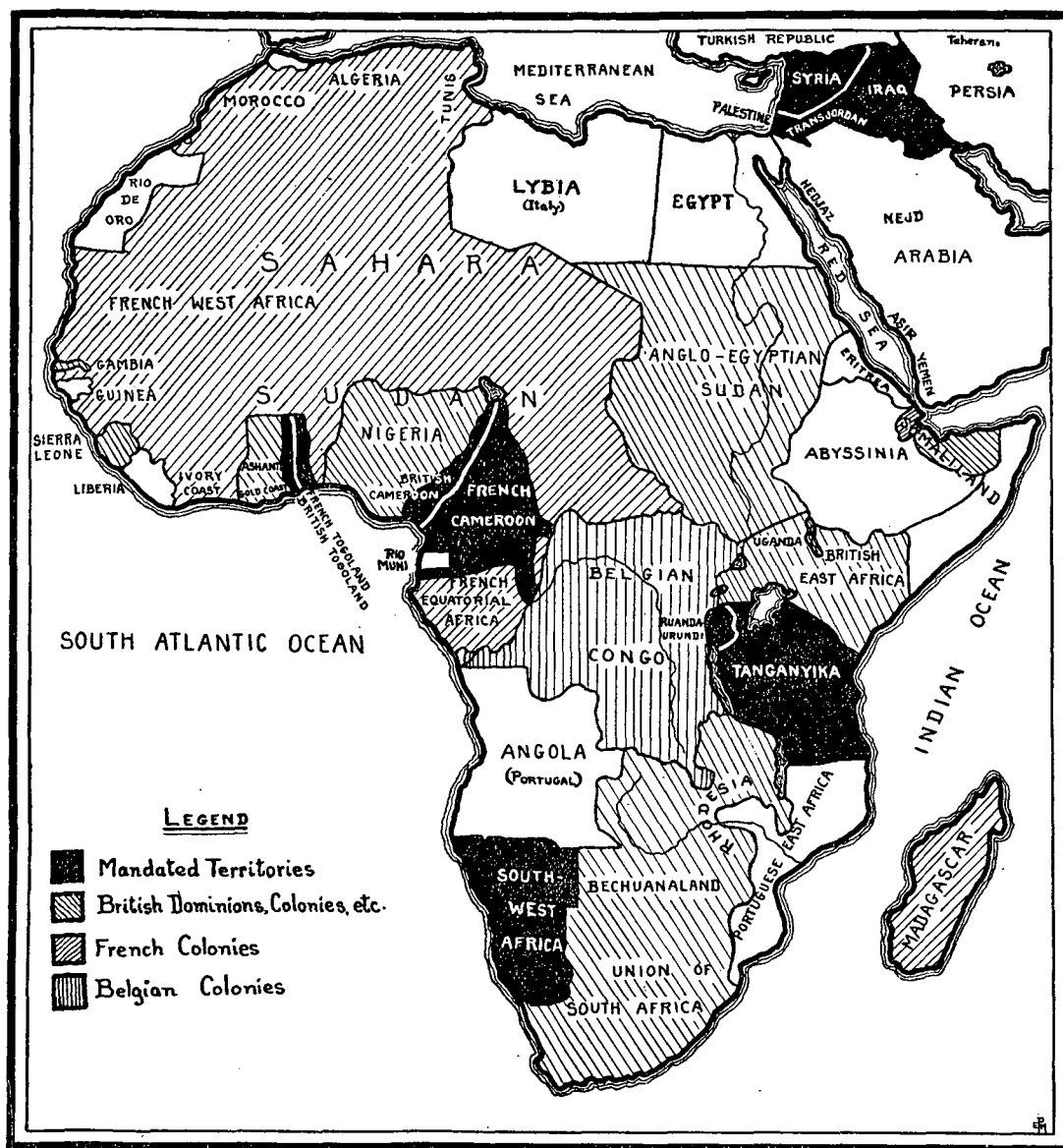
CASES OF INADEQUATE INFORMATION

In practice these sources of information have not always sufficed to give members of the Commission a clear understanding of situations with which they have had to deal. A striking instance occurred in 1923 when the Mandates Commission was investigating the Bondelzwarts uprising in the mandated territory of South-West Africa. At that time the Commission was furnished by the mandatory power (the Union of South Africa) with contradictory information in documents representing respectively Dutch and Anglo-Saxon views of the affair. In transmitting these documents the Union Government did not comment on the contradictions they contained nor did it inform the Commission what steps had been taken to restore tranquillity and normal conditions. It contented itself with dispatching its accredited representative to Geneva to answer any specific questions the Commission might put to him. This official's testimony caused the members of the Mandates Commission to be constantly aware of the fact that they had before them only one of the parties in the case. The situation produced a feeling of uneasiness which was reflected in the formal report the Commission later presented to the Council on the subject of the uprising.

Again, in October, 1925, after protracted consideration of a petition from the Execu-

*This was supplemented by copies of laws and regulations applying to the territory and special information requested in individual cases by the Mandates Commission through the Council.

†Provision had not been made originally for receiving written petitions. Later, on the initiative of the Permanent Mandates Commission and with the consent of the mandatory powers, it was given a place in the system.



Prepared by the Foreign Policy Association.

Mandates in Africa and the Near East

The following is a complete list of mandated territories together with the mandatory powers to which they have been accredited: Class A Mandates (Near and Middle East): Iraq—to Great Britain; Palestine and Transjordan—to Great Britain; Syria—to France. Class B Mandates (Equatorial Africa): The Cameroons—divided between France and Great Britain; Ruanda-Urundi—to Belgium; Tanganyika—to Great Britain; Togoland—divided between France and Great Britain. Class C Mandates: South-West Africa—to the Union of South Africa; Islands of the Pacific (north of the equator)—to Japan; Nauru—to Great Britain (responsibility shared by New Zealand and Australia); New Guinea—to Australia; Western Samoa—to New Zealand.

tive Committee of the Palestine-Arab Congress, in which numerous charges were preferred against the British administrative policy in Palestine with respect to granting concessions, the extent of local autonomy, alleged acts of repression, the extent of Jewish immigration and other matters, the Permanent Mandates Commission found itself unable to reach a con-

clusion because of its insufficient knowledge of actual conditions in the mandated territory. The report it laid before the Council with respect to this petition had therefore to be inconclusive*:

"... In spite of the very numerous allegations made and the information contained in this petition and in the report and comments of the

*At a subsequent session, however, definitive recommendations were formulated for transmittal to the Council. See p. 50.

mandatory power, and in spite of the supplementary information given by the accredited representative, the Commission has not been able to reach a unanimous and final decision concerning the numerous questions raised. Indeed the Commission doubts whether it can make any adequate recommendation on so complex and delicate a subject on the sole basis of written documents, even by examining these documents in conjunction with the accredited representative of the mandatory power against whom the petitioners feel they have cause for complaint."

There had been a hint of similar dissatisfaction with the conditions under which the Mandates Commission performed its duties when in the course of its 1924 session it considered a petition emanating from persons in French Togoland, who some time previously had been deported from their homes to the northern part of the territory, and were not yet permitted to return. Statements of petitioners and mandatory authorities in this case were mutually contradictory, and the Commission found itself in an invidious position. As one of the members pointed out, the Commission, not having the data necessary for proper appreciation of the claims of the persons involved, could only bow before the decision of the responsible local government. No matter what the scruples of the members, the Commission's methods of procedure prevented an examination of petitioners who might have made it clearer to them whether or not the petition was well-founded.

PETITIONERS NOT GIVEN AUDIENCE

But the Commission always hesitated to supplement existing sources of information by either one of the two alternatives suggested to it from time to time—viz., by giving official audience to responsible petitioners or by conducting inquiries of its own in the mandated territories concerned. In at least four specific instances it refused, after full discussion of the point, to commit itself to one or both of these methods. It refused to do so in 1923, when the Anti-Slavery and Aborigines Protection Society of London was prepared to give information bearing on the cause of the Bondelzwarts uprising; it refused again in 1925 when the Executive Committee of the Pal-

estine Arab Congress asked for a hearing on the general subject of British policy in Palestine; it refused a third time in February, 1926, when a Syrian delegation asked for a formal hearing in which it hoped to supplement and support the views expressed in the majority of the one hundred separate communications and petitions concerning the Syrian situation then in the possession of the Commission; and finally it refused a fourth time in June 1926, when the Vaad Leumi (Jewish National Council) asked for an audience during the consideration of the report on Palestine.

EXPEDIENCY OF GRANTING HEARINGS DISCUSSED

Although these requests for an audience were refused, they did have the effect of emphasizing certain philosophical difficulties which the members of the Commission had continually to face. Was the Mandates Commission a judicial body whose function it was to decide between petitioners and mandatory powers? If so, could it be said to discharge its duties impartially when it permitted accredited representatives of the mandatory power verbally to refute the petitioners' allegations but did not permit the petitioners themselves to appear in defense of those allegations? Even if the Commission were not a judicial body, but merely a group of experienced administrators whose duty was to advise rather than to judge, did not the charge of partiality still apply? But if, on the other hand, petitioners were to be permitted to appear before the Commission and to question the verbal statements of the mandatory powers' accredited representatives, how could the mandatory powers be expected to maintain their prestige and authority unimpaired in the territories entrusted to them?

Again, the proposal involved a constitutional difficulty. The Council in January, 1923, had adopted a definite procedure to govern the Mandates Commission in handling petitions. Was it an oversight that it had said nothing about granting audience to petitioners? Or did the omission signify that the Commission must confine itself to the method of procedure there described and leave to the Council itself

any extraordinary measures in cases where the regular procedure was considered inadequate for arriving at a just opinion?

Discussing these questions and others growing out of them, the Commission decided in October, 1926, that in certain cases it might be an advantage to hear petitioners. At the same time it was of the opinion that it would be incompatible with the general character of its own duties and work to constitute itself a kind of tribunal to deliver judgments on differences between petitioners and the mandatory power. Thus it suggested that audiences should be given to petitioners only in rare and exceptional circumstances when for special reasons the Commission found it impossible to form a definite opinion as to whether a petition it had received was well founded or not. However, before formulating a definite recommendation to this effect, the Commission asked for the views of the Council on the subject.

MANDATORY POWERS EXPRESS DISAPPROVAL

The mandatory powers lost no time in expressing to the Council their emphatic disapproval of the Commission's suggestion. The governments of Great Britain and New Zealand pointed out that in British practice it had never been necessary for the Secretary of State to give audience to petitioners. The Mandates Commission possessed the right to ask mandatory powers for additional information on any obscure point, and in the unthinkable event of a mandatory power failing to supply the Commission with the desired information, it was clear that the Council would be free to take what action it considered wise. The government of the Union of South Africa took much the same position. The Australian Government added that in case audience were given to petitioners then audience would also have to be given to persons representing the mandatory power, which, in the case of distant countries, would involve great expense. The Japanese Government stated that a Japanese internal law prohibiting audience to petitioners worked satisfactorily. It did not consider the proposed change necessary. The French Government maintained that

the sessions of the Mandates Commission must not be converted into controversial suits where the assertions of the mandatory power might be questioned by inhabitants of the mandated territories. Such a procedure would only serve to foment disorder and bring about the paradoxical result that supervision would be exercised by the very persons over whom supervision had been instituted under the mandate system. Finally the Belgian Government pointed out that even in countries endowed with liberal constitutions petitioners were not usually granted the right of audience. It agreed with the French Government that to constitute the Mandates Commission a court of appeal against the mandatory power would foment revolt, and with the British Government that the Council itself might in special cases order extraordinary measures of investigation, which, it added, might be entrusted either to the Commission or to some other authority.

WRITTEN PETITIONS CONSIDERED SUFFICIENT

The decided opposition of the mandatory powers to what they regarded as an unwarranted extension of the authority of the Mandates Commission, coupled with the hesitation the Permanent Mandates Commission itself had shown in bringing the matter forward, led the League Council at its March session to decide that there was no occasion to modify the procedure hitherto followed by the Commission in the matter of petitions. Thus, in future, petitioners will still be dependent upon the written appeals, which in the past have been resorted to when League influence was to be invoked.

Among the petitions received up to the present the most important have concerned two of the territories under A mandates—Syria and Palestine. In the first year of its existence the Secretariat received 613 appeals, letters and telegrams from these two countries, many of them asking for complete independence and protesting against the application to those countries of the mandate system, or against the proposed choice of mandatory powers. Such communications, however, the Commission was not competent to consider.

In the case of Syria, valid petitions began to arrive in greatest numbers after the rebellion was well under way in 1925. The more important of these were extensively used as a basis for cross-examining the accredited representative of France when he appeared before the Commission in February, 1926, to give an account of the French administration in Syria. They did not, however, have the effect desired by the petitioners—viz., the undertaking of an inquiry in Syria by the Commission on its own account. Instead the French Government was permitted to appoint its own nominees to conduct investigations into the causes of the rebellion.

In the case of Palestine, petitions have been received from four sources. One of these sources was the Arab population, which, when it discovered that the Mandates Commission would not entertain protests against the mandate itself or against the policy of establishing in Palestine a Jewish National Home, devoted its energies to drafting petitions in which it attacked in detail British administrative activities on behalf of the Jewish population. They urged repeatedly that the Mandates Commission should come to Palestine and judge for itself whether the Jewish immigration encouraged by the mandatory authorities was not excessive. In this they failed, but they did succeed in so impressing the Commission with a sense of the complexity and delicacy of the situation in Palestine that, as already stated, the Commission found itself unable at its seventh session to make a conclusive report to the Council on the subject, and it was not until its ninth session that it made substantive replies to the petition, in the main upholding the policy of the British authorities.

The three other sources from which petitions regarding Palestine emanated were the Zionist Organization (which had special grievances against the educational and land policies of the mandatory authorities), the Jewish National Council (which protested against conditions of settlement and life in Palestine), and a minority sect of Jews who protested against the degree of control exercised over their activities by the majority groups of Jews. Here again the Commission upheld British policy in the

main, but made it clear that it expected from the mandatory power strict observance of the clauses of the mandate guaranteeing religious freedom for all inhabitants of the country.

Petitions from territories under B and C mandates have been comparatively few, the majority of them being concerned with property rights of white persons. Natives of these territories have not yet become generally articulate, although the group of native deportees in French Togoland already referred to (see p. 48) sent a number of messages to Geneva in successive years, and a group of people of mixed descent in the Rehoboth community (South-West Africa) also submitted petitions. It is anticipated that these classes of petition will gradually increase as the functions of the Permanent Mandates Commission become familiar to the inhabitants of territories under B and C mandate.

COMMISSION REQUESTS FULLER REPORTS

Whether or not the Mandates Commission should resort to the questioning of petitioners in extraordinary cases was, as already indicated, a question on which the members of the Commission were themselves long divided. But there had been complete unanimity, meanwhile, in the opinion that something must be done to ensure that the regular annual reports of the mandatory powers should now contain more complete data on the condition of mandated territories than had been in the first place required of them. It was for this reason that the Mandates Commission presented at the forty-first session of the League Council (September 3, 1926) what Sir Austen Chamberlain described as "an immense questionnaire" with the request that copies of the document be sent to the mandatory powers for their guidance in drafting subsequent annual reports on the administration of B and C mandates.

The new document was intended to replace the questionnaires for B and C mandates which the Commission had prepared at its first session in 1921 before the terms of the Class B mandates had been confirmed. These earlier questionnaires had been designed to elicit from the mandatory

powers information which would show whether or not guarantees laid down in Article 22 of the Covenant and in the specific terms of the draft mandates were being fulfilled and whether or not the general spirit of the Covenant was being observed by the administrations concerned. But the earlier questionnaires had been frankly provisional and even by 1922, when the first reports based on the 1921 questionnaires began to reach Geneva, it had become evident to the members of the Commission that the existing questionnaires were defective in a number of ways, and in the following year they took in hand seriously the matter of revising them. The work of revision proceeded slowly and was the subject of considerable deliberation during five subsequent sessions of the Commission. It was not until its ninth session (June, 1926), that the Commission finally adopted the complete text of the new list of questions and transmitted it to the Council.

COUNCIL REFUSES COMMISSION'S REQUEST

The proposal of the Commission was greeted in the Council by determined opposition from representatives of mandatory powers present. Ultimately, on December 10, 1926, after the mandatory governments themselves had submitted in writing their observations on the subject, the Council referred the list of questions back to the Commission with a request that it reconsider the document in the light of the criticisms of the mandatory governments. The Commission will thus be obliged at its forthcoming meeting (June, 1927), to consider once again the question of how it is to ensure for itself regular receipt of the information it desires, and will presumably take at that time whatever action seems to it appropriate in view of the attitude of disapproval prevailingly adopted by the mandatory powers.

The document submitted by the Commission to the Council last year, although popularly referred to as a questionnaire, and although drafted in the form common to questionnaires, was in one important sense not a questionnaire. It was not intended that mandatory powers in rendering

annual accounts of their administration should cast them in the form of separate answers to the two hundred and thirty odd questions asked by the Commission. The annual statements of the mandatory authorities were as usual to be drafted in the form of connected reports which should cover the subject-matter of only those questions which were applicable to the territory concerned. Page references opposite such questions would indicate to the members of the Commission where they might find in the annual reports the information each of them sought and would facilitate their study of the specific subjects assigned to them by the Commission. For the purpose of shifting the emphasis from the questions themselves to the subject-matter to which they referred, the Commission changed the title of the document from "Questionnaire intended to facilitate the preparation of the annual reports from the mandatory powers," the form previously used, to "List of questions which the Permanent Mandates Commission desires should be dealt with in the annual reports of the mandatory powers."

But, as already indicated, the underlying difference between a "questionnaire" and a "list of questions" was not sufficiently important in the view of the foreign offices of the mandatory powers to prevent them from expressing marked disapproval of the scope of the new questions themselves. When the matter first came before the Council on September 3, 1926, Sir Austen Chamberlain let loose a flood of invective against the Commission, in which he stated that a general feeling was growing among mandatory governments that there was a tendency on its part to extend its authority to a point where government would no longer be vested in the mandatory power but in the Commission itself. He was sure that was not the intention of the Covenant. He understood the Covenant to intend that the governing authority of those territories should be none other than the Government which had received the mandate. This, he said, was the issue raised by the new questionnaire, which was infinitely more detailed, infinitely more inquisitorial than the questionnaire which had hitherto been in force with the sanction of the Council.

**OBJECTION RAISED
BY MANDATORY POWERS**

The French, Japanese and Belgian representatives on the Council agreed with Sir Austen. A representative of New Zealand added that his own government was becoming impatient of the Commission's minute investigation of administrative details. A South African representative brought the discussion to a climax by asserting that territories under C mandates were an integral part of the mandatory's own territory and that in the new questionnaire matters were touched upon which really did not concern the Permanent Mandates Commission but rather constituted an investigation of the policy of the mandatory in its own territory. The representative of the Permanent Mandates Commission retorted that the Council itself had declared when the Commission was constituted that it must have as wide as possible a conception of its duties. Moreover, the principle had been accepted in the terms of the mandates themselves that the supervision of the Mandates Commission should extend over any aspects of the administration of the mandated territories that attracted the interest of the Council.

Although the mandatory Governments' written observations on the list of questions did not adopt the belligerent tone of Sir Austen Chamberlain's outburst, and although the Belgian and French replies (especially the former) were much less unpromising than the declarations of Council members might have led the public to expect, their observations on the subject were unfavorable in the main. The Japanese Government objected that since Japan exercised a mandate over a large number of scattered islands, the new list of questions would lay too heavy a burden of compilation upon the shoulders of their own officials. The Belgian Government's chief objection to the new list of questions was that it might cause the local administrative authorities to devote too much of their time to drawing up reports at the expense of practical work and concrete results. Other governments objected for more fundamental reasons.

The Australian Government asserted that neither the Council nor any other League body was competent to interfere in the actual

administration of mandated territories. The new list of questions suggested, however, that it was the intention of the Mandates Commission to prescribe, if indirectly, how the mandates should be administered. It was implied that the Australian Government considered that the Permanent Mandates Commission was attempting to exceed its powers. The British Government referred to a report submitted to the Council in 1920 by M. Hymans in support of its contention that the list of questions was too detailed. It suggested that if the Permanent Mandates Commission ever had reason to suppose that the ideals of the Covenant were not being realized in a given territory under mandate then it would naturally pursue its inquiries in such detail as might be found necessary to ascertain the facts and would make such recommendations as it thought proper for remedying any particular abuses that might be revealed. But there was nothing to lead to the conclusion that the mandatory governments were ever intended to submit annually for confirmation or criticism by the Council or the Commission all the details of its administrative and legislative activities. The list of questions, it added, dealt with a number of points on which the British Government would not think it wise to interfere with respect to colonial administration within the Empire itself. It would be better to confine the list of questions to its present section headings and to omit the extreme minutiae of the sub-headings.

**BASIC DIFFICULTY
OF MANDATE SYSTEM**

The discussions at Geneva illustrated clearly enough one of the fundamental difficulties that has arisen under the mandate system. The mandatory powers, conscious as they were of the necessity under the terms of the Covenant of submitting adequate annual reports to the League, were still more conscious of the practical difficulties of administering the mandated territories in such a way as to satisfy a wide variety of conflicting interests. They considered themselves to be fully as anxious as the Permanent Mandates Commission to find an effective remedy for their administrative difficulties. The type of report

hitherto presented was in their view sufficient to indicate whether or not the mandatory power was fulfilling its duties toward the League. Any attempt to extend the existing questionnaires was consequently construed by them as an unwarranted effort on the part of the Mandates Commission to increase its own power, and with every increase of the Commission's power the mandatory Governments anticipated a corresponding check upon their own initiative and authority in the territory they administered.

The Permanent Mandates Commission for its part was aware of the administrative difficulties with which mandatory powers were faced, and declared often enough that it had no wish to take action which would hinder any mandatory power from carrying on the difficult task entrusted to it by the League. Thus it had exercised scrupulous care, whenever it considered the administrative policy of a mandatory power to be at fault, to couch its suggestions to the Council in terms which would be as little detrimental as possible to the prestige of that power. Nevertheless it was clear that the first responsibility of the Commission was to see that the safeguards the League had provided for protection of the inhabitants of the mandated territories were actually being made effective. Five years' experience had shown that serious trouble was as apt to develop from details of administration as from broader aspects of mandatory policy. The Commission had accordingly concluded that certain detailed information was indispensable.

Briefly, it may be said that the following reasons led the Mandates Commission to revise its original questionnaires. It needed to have in its files certain annual information which had formerly been furnished irregularly on special request, or only verbally on the spur of the moment by the accredited representatives of the mandatory powers. The arrangement of all the reports in standard form would facilitate their use and assist the Commission in its work. The Commission also required to have from the mandatory powers certain information which would show to what extent they were applying various decisions adopted by the Com-

mission from time to time to clarify and define phrases of uncertain meaning appearing in the mandates. Of such phrases a number had been the subject of protracted discussion. One example may be cited.

The mandatory powers designated as trustees by the League of Nations were expected to derive no profit from their trusteeship. What obligations arose from this principle? To what degree should mandatory powers be expected to undertake expensive projects upon which no immediate return was to be anticipated? Was it open to them to take security of any kind in a mandated territory in respect of a guaranteed loan or advance—e. g., to attach the revenues derived from a particular source for the service of such a loan? Or was it permissible for a mandatory power to protect itself from having to meet possible deficits by establishing in a mandated territory a system of increased taxation designed to yield a large annual budgetary surplus?

SCOPE OF QUESTIONS ENLARGED

For these reasons there appeared in the new list of questions certain general headings which had no place in the old questionnaires. Among these were captions on the status of the native inhabitants of mandated territories, the status of the territories themselves, international relations, general administration, trade statistics and judicial organization. Other groups of questions were almost entirely recast—e. g., those on public finance, direct and indirect taxation, social, moral and material condition of natives, education, public health, conditions and regulation of labor, land tenure, and alcohol, spirits and drugs. There was a change of emphasis in most of the remaining questions—i. e., those about police, defense of territories, arms and ammunition, forests, mines, population and liberty of conscience and worship.

To indicate in a brief review all the considerations underlying the proposed changes in the twenty-two categories of questions would be impossible. In the summary which follows, a selection has of necessity been made, in an attempt to pre-

sent the more important features of the new list of questions.*

SUMMARY OF PROPOSED LIST OF QUESTIONS

Status of Territory—Since the mandate system was a compromise between annexation by an imperialist power on the one hand and direct international control on the other, it was the duty of the Commission to see that the mandatory authorities accorded the territories under their control an intermediate status in keeping with their special position. For example, it was not deemed permissible for mandatory powers to assert that they possessed sovereignty over mandated territories, but at most that they “exercised sovereign powers.” Again, incorporation of a mandated territory in the political organism of the mandatory power would be inadmissible until the mandated territory had first reached “a sufficiently high state of development to allow the mandatory to withdraw.” If incorporation preceded independence in such cases, it could only be described as annexation. To make certain that political and financial affairs of mandated territories were not identified with those of neighboring territories with whom some degree of administrative union might legitimately be established, the Commission requested the mandatory powers to keep it annually informed of laws affecting the status of mandated territories and to indicate the extent of their financial and administrative autonomy.

Status of Native Inhabitants of the Territory—For four years the problem of the nationality of natives in mandated territories gave the Commission a certain degree of concern. Since mandated territories were not sovereign and since, also, several of them were artificial political and geographical units, the natives could scarcely be said to have a territorial nationality. On the other hand, as the mandatory states did not possess sovereignty over the mandated territories, they could not legitimately confer their own nationality

upon the inhabitants. That would amount to annexation, and would be contrary to the spirit of the Covenant. The Council ultimately determined that no wholesale naturalization of native inhabitants of a mandated territory should be permitted, although mandatory powers might if they wished make provision for the voluntary naturalization of individuals. In South-West Africa, however, where half of the white inhabitants of the territory were German nationals, presumably prepared to sponsor the restoration of the territory to Germany, the Union of South Africa was permitted at its own request to confer the status of British subjects on all German nationals except those who might formally signify their individual preference to retain German nationality, such individuals being permitted to remain in the territory undisturbed and unmolested. But in general, it was suggested, the term “protected persons,” already in use in some of the mandated territories, might be applied to native inhabitants of all mandated areas.

A question was included in Section B as to the arrangements made in each territory to describe the national status of natives. Other questions asked for descriptions of the arrangements made to safeguard native life and property.

International Relations—After some discussion it had been decided in 1925 that mandatory powers should make arrangements for the extension to mandated territories of the benefits of treaties concluded with foreign countries, if such treaties were not inconsistent with the terms of the Covenant and of the mandate concerned. Accordingly the Commission included a question on this subject in the section on international relations. It also asked for a statement as to the extent to which the principle of economic equality for all members of the League of Nations had been made effective.

General Administration—A series of proposed questions under this heading asked for detailed information concerning the division of administrative authority, the character of any existing councils, the number, qualifications and nationality of officials, and the extent of native participa-

*The seven categories omitted in the present summary are as follows: Trade Statistics; Police; Arms and Ammunition; Liberty of Conscience; Forests; Mines; Population.

Under each of these headings brief questions of a general nature were asked.

tion in government. The questions gave no hint of the concern the Commission had sometimes shown lest mandatory powers should rely too much on indigenous tribal or other authorities to the detriment of their own control. Repeatedly the Commission had indicated to accredited representatives of the mandatory powers that administrative powers should be retained by existing native authorities only as long as the mandatory powers could give assurance that their policies were being effectively carried out through these native agents.

Public Finance—The Commission asked under this heading for detailed annual budgets and comparative tables for each of the preceding five years, in the belief that this would indicate approximately the degree of importance attached to various administrative projects by the mandatory power. It would also render it easier to judge whether or not mandatory administrations were actuated by the spirit of the Covenant. A case meriting rebuke had come to the attention of the Commission in 1925 when it was discovered that barely one per cent of the revenue of one of the territories was being spent on the education of the natives. Disproportionate expenditures would be more readily recognized were detailed budget statements to be put into the hands of the Commission.

After a brief question as to public debts, there followed in this section a series of questions concerning loans, advances or free grants-in-aid made by mandatory powers to meet deficits in budgets of mandated territories. It had early become apparent that capitalists were hesitating to invest in mandated territories because of a certain lack of confidence in the mandate system. In case of the revocation of a mandate, or in the case of its voluntary renunciation by an existing mandatory power, what, they asked, would become of any guarantees upon which loans to mandatory powers had been based? To restore confidence, the Council in 1925 had adopted resolutions ensuring the validity of obligations and rights legally acquired in mandated territories and had undertaken to guarantee that validity in the improbable case of

the transfer of a mandate to a new mandatory.

Some of the questions in this section were designed to discover the extent to which capitalists had been reassured by the Council's action. Others were designed to discourage mandatory powers from increasing taxation to establish a budgetary surplus or from attaching the revenues from any particular property in the mandated territory for the service of loans. Security for loans, it had been suggested in 1924, should consist of a first charge on the whole revenues of the mandated territory, and in no case constitute a lien or mortgage on any particular railway or other public work so as to involve ownership or control over it. For if a vital asset of the mandated territory—e. g., an arterial railway—formed the security for advances or loans by the mandatory power, the latter would have obtained a hold upon the country amounting to annexation. If, again, a vital asset became the property of foreign bondholders, transfer or resignation of the mandate would be impossible, since the new Government or mandatory would be deprived of control over essential public services.

Direct Taxes—Prestation and the corvée had been reported in many instances in mandated territories. That is to say, because of the reluctance or inability of natives to pay any taxes, they were being compelled to labor without wages either on projects of the mandatory power for the development of the territory or on the upkeep of the tracks for the maintenance of which tribal chiefs were responsible. Whether compulsory labor was exacted in default of payment of taxes, and if so, on what basis the equivalent was calculated, and whether native chiefs were allowed to exact labor tribute, or a tribute in cash or kind, were points on which the Commission wished to be informed. Other questions under this heading inquired into types of taxation imposed upon natives and non-natives, the rate, apportionment and collection of such taxes, and the availability of part of the revenue for local distribution among chiefs and communities.

Indirect Taxes—In view of the principle that there should be equal commercial rights for all members of the League of Nations in the territories under B mandates, members of the Commission expressed some doubt as to the propriety of incorporating such territories with neighboring colonies for customs purposes, as had been permitted in the case of Ruanda-Urundi, Tanganyika, Togoland, and the Cameroons.* But it was for the sake of discovering the extent to which production was encouraged in mandated areas rather than anxiety for the "open door policy" that caused this section of the proposed list of questions to include an inquiry as to whether the products of the mandated territory were given preferential treatment when imported into the territory of the mandatory power, its colonies or dependencies. Other questions concerned tariff rates and types of indirect taxation.

Judicial Organization—Under this heading several general questions were suggested concerning the judicial organization, the constitution of the courts, and the degree of native participation. The remainder of the questions concerned types of punishment. Precise information was requested as to the usages with respect to forced residence, deportation and corporal punishment, and the sending of prisoners to places of confinement some distance from their homes. A question concerning extra-legal forms of punishment appeared to have been aimed, among other things, at the practice, avowed by the accredited representative of one of the mandated territories, of permitting white farmers to carry off convicted natives to labor on their farms.

Defense of the Territory—In both B and C mandated territories, any organization of native military forces not in accordance with strictly local requirements for the maintenance of order and defense of the territory was considered to be contrary to the spirit of the Covenant and of the mandates. An exception had been made when the special privilege was accorded to France of using

troops from Togoland and the Cameroons outside of those territories in case of a general war. It later came to the Commission's knowledge that this privilege had been interpreted in some quarters to mean that in order to increase its military strength elsewhere, France might establish general conscription in the mandated territories in case of another general war. One of the members of the Commission took this occasion to express the opinion that France would be authorized to use outside of the territories only those native troops which had been used in the territories in time of peace for police and defense purposes. A question in the section on Defense inquiring into the duties of discharged soldiers in case of an emergency was reminiscent of this opinion.

Other pertinent questions were asked as to the strength, composition and recruiting of troops, if any, and the arrangements made for defense of territories possessing no troops of their own.

Social, Moral and Material Condition of the Natives—The prohibition of abuses such as the slave trade was one of the guarantees upon which the mandate system was based. So solidly entrenched was some form or other of slave traffic, however, that cases of it were still being reported by the mandatory powers to the Commission at its last session in November, 1926. Laws providing for the emancipation of slaves, laws abolishing the legal status of slavery, laws against the pledging of persons in payment of debt, and laws for the punishment of slave-owners did something to modify but had not yet eradicated slavery. In all the B mandates and in at least two of the C mandates domestic slavery was still known to exist. The pledging of persons also still occurred. The slave trade proper, although greatly reduced, had not yet been eradicated. Thus until the desired end had been achieved it was the intention of the Commission to question mandatory powers closely on the measures taken to reduce slavery and slave trading and to encourage them to keep a close check upon the results of their own administrative policies.

Whether or not there was any restriction put upon the movements of natives within

*Permanent Mandates Commission, Minutes of the Second Session, p. 59.

the territories, and what the total annual expenditure had been on their welfare were additional questions appearing in this section.

Conditions and Regulation of Labor—This was the longest section of the questionnaire, dealing as it did with one of the most difficult problems arising from the juxtaposition of two such dissimilar civilizations as those of Europe and Africa. The conflict had been forcefully described to the Commission by one of its own members when, during the course of its sixth session he said that he wondered

“whether the time had not come to call the attention of the mandatory powers to the necessity of maintaining a just proportion between the rate at which the economic equipment and development of the mandated territories should be proceeded with, and the amount of work which might reasonably be required from the native population. . . . There were regions among those in which the Commission was interested where the question did not arise, or did not have a character of any real gravity. . . . There were other races, however, which had not in any way been prepared for the ordeal to which they were submitted by the sudden introduction of an industrial civilization. Europeans had brought them peace and security. They had not had the time, however, to educate in the need and habit of regular and sustained work populations which, from time immemorial, had lived by hunting and fishing and by gathering natural produce and the products of their rudimentary agriculture.

“The natives at this stage of their evolution were not attracted by wages. Moreover, owing to their improvidence, they spent their wages immediately, so that they drew no real advantage from their labour. Doubtless, the natives were not indifferent to wages earned without making any serious effort, but when they could only acquire money at the expense of serious risks and a complete disturbance of their previous conditions of life, they naturally sought to evade these new requirements.

“What happened to these races when they were abruptly transported far from their homes to work upon railways under construction or in a modern factory or in a mine?

“The Commission had certain very striking statistics in regard to the mortality among native workmen employed in works of this character. . . . The statistics available registered a death-rate of 7 per cent and 10 per cent, but they passed over in silence the number of individuals sent back to their villages permanently incapacitated, or with organic diseases which were in-

curable. . . . It seemed clear that labour subjected to such wastage was physically incapacitated for the work imposed upon it in spite of the care with which it was surrounded. . . .

“Certain public works had a general and immediate interest, so that they justified the most cruel sacrifices. There were, on the other hand, enterprises, public as well as private, the extension or realization of which might without disadvantage be postponed until the native was able to support without injury the burden they involved, and to draw from them a profit, at least indirect.”*

Reports of the mandatory powers and statements of their accredited representatives at Geneva showed that in the majority of mandated territories, although not in all, it was impossible to obtain sufficient labor for essential public works without having recourse to compulsory or forced native labor, or indentured or contract labor from abroad. The mandates forbade forced labor except in the case of essential public services, and stipulated that such labor must be remunerated. The conditions under which both forced labor and imported labor were carried on was a subject of concern to the Commission. The detailed questions which it formulated on the subject suggested the particular abuses which have to be guarded against in backward countries. A fuller discussion of the questions in the section is beyond the scope of the present study. They were, however, of very great importance and motivated at least some of the adverse comments that were offered at the September Council meeting by representatives of the mandatory powers.

Education—The questions in the section on education were extended and altered so as to indicate more fully the importance of the subject. Thus, questions on the extent, classification and quality of educational facilities at once suggested a demand for higher standards than formerly and indicated by implication the advance that had already been made in a number of territories. At the same time it constituted a rebuke to any mandatory governments which had assigned education a subordinate position or, as in the case of one power, had developed no educational policy of its own whatever, but merely

*Minutes of the Sixth Session of the Permanent Mandates Commission, held at Geneva from June 26th to July 10th, 1923.

gave small grants-in-aid to existing mission schools over whom no practical control was established.

Alcohol, Spirits and Drugs—Although Article 22 of the Covenant provided for prohibition of the liquor traffic in territories under both B and C mandates, in actual practice the B mandates merely stipulated a “strict control” of the liquor traffic. The Mandates Commission desired to know whether the amounts of alcoholic liquor imported into mandated territories were greater or less than the amounts imported into neighboring territories. It proposed accordingly to require precise statistics on importation, duties, licensing systems for the sale of imported alcoholic liquors, and measures taken to prevent smuggling. Each mandatory power was asked to state its definition of the terms “liquor traffic” and “trade spirits.” The Commission also inquired as to the degree of support given to Moslem leaders or other groups of people who were trying to suppress the use of intoxicants. Other subjects of inquiry were the degree to which natives were addicted to drinking, the measures taken to prevent both the manufacture of intoxicants by natives and the sale and consumption of native-distilled beverages. A further question was included on the suppression or regulation of the use of drugs.

Public Health—Insufficient statistics on public health had been a perennial subject of comment by the Mandates Commission. It recognized, however, the difficulties involved in compiling statistics of this sort in territories as little developed as those under B and C mandates. But it was necessary to have such statistics if the mandatory powers were to possess an intelligent estimate of the value of their own policies. Accordingly the Commission asked once more for statistics of mortality and morbidity in mandated territories. Other questions concerned the general work of the responsible health organizations, the number of doctors (it had been suggested repeatedly that one, two, or three doctors were not sufficient in certain territories where the scope of public health work was wide and its nature exacting), the training of native health workers,

the cooperation of native leaders, and the coordination of private and public effort in sanitation and preventive and curative medicine.

Land Tenure—The questions under this heading were designed to elicit full descriptions of the land policies prevailing in the various mandated territories. An excellent survey of these policies was prepared by one of the members of the Commission in 1923* on the basis of early reports, but that document required supplementing from year to year as regulations were altered and alienable lands became gradually assigned to new owners. The questions on land tenure were concerned primarily with safeguarding native rights, whether of ownership or of use, and with seeing that mandatory powers restricted their claims of ownership within the limits prescribed. The subject was one which had occupied a large share of the Commission’s attention and upon which the Legal Section had had to be consulted. In answering the proposed questions mandatory authorities would have to indicate whether effect was being given to the understandings which had grown out of these prolonged discussions.

COMMISSION OUTLINES ADVANTAGES OF PROPOSAL

The Commission gave the proposed list of questions its inclusive character so that its future revision should not be necessary. In this manner a fuller degree of continuity could be established in the reports of mandatory powers than was at present possible. Under existing circumstances the Commission addressed to mandatory powers from time to time a number of special requests for information outside the scope of the provisional questionnaires. Under the proposed scheme mandatory authorities would know in advance the questions they would be expected to answer, and could adjust their annual routine to requirements which would not vary, as formerly, from year to year. Moreover, the Commission has hitherto had to ask the accredited representatives of mandatory powers a number

*Annexes to the Minutes of the Third Session of the Permanent Mandates Commission (1923).

of technical questions, some of which it has been difficult or impossible for them to answer fully without communicating first with the mandatory authorities. The burden of responsibility laid upon accredited representatives of mandatory powers under the proposed scheme would be sensibly lessened since the published reports would contain more complete information.

An incident occurred during the course of the tenth session of the Mandates Commission which made it apparent that not all representatives of the mandatory powers regarded the new proposal in the same light as Sir Austen Chamberlain, who had led the attack against it at the September Council meeting. Mr. Ormsby-Gore appeared at Geneva in November as Great Britain's accredited representative to render to the Permanent Mandates Commission an account of British administration in Tanganyika, Togoland and the Cameroons. After the Commission had dealt with one of the British mandates in Africa, the Chairman remarked that he hoped Mr. Ormsby-Gore would not take away with him the impression that the questions he had been asked were outside the scope of the Commission's terms of reference. Mr. Ormsby-Gore replied that he certainly had not received the impression that the Commission had exceeded the limits of the interest which it was bound to take in the administration of the mandated territory. Personally he preferred in his statements to the Commission to be able to base his replies on concrete questions of detail. Such a method of examination was greatly

to be preferred to any mere excursion into generalities.

IMPASSE RESULTS FROM COUNCIL VETO

But whatever may be the individual opinion of administrators or other influential officials of mandatory powers, the fact remains that the governments of the mandatory powers have condemned the new list of questions in its present form. Both parties to the discussion are convinced of the validity of their own opinions in the matter and a difficult problem of mutual adjustment now remains to be solved. The fact that it is the Council which confirms or rejects the proposals of the Mandates Commission makes it impossible for the latter body to effectuate its decisions unless it has the support of the mandatory powers themselves. The mandatory powers are represented on the Council, and any one of them by a single veto may overrule a recommendation from the Mandates Commission. In this case an impasse seems to have been reached which only the exercise of considerable tact can prevent from developing into a regrettable break between the Council and the Commission. It demonstrates in a practical way the statement frequently made that there can be no effective supervision of mandatory administration unless there also exists a mutual confidence on the part of the Commission and the mandatory powers. It also raises the question of whether the mandate system could operate at all were mutual confidence for some reason or other to be destroyed.

ANNEX

ARTICLE XXII OF THE LEAGUE COVENANT

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization, and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of

their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandataries on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the ren-

dering of administrative advice and assistance by a Mandatary until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatary.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatary must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as Southwest Africa and certain of the South Pacific Islands, which,

owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatary, and other circumstances, can be best administered under the laws of the Mandatary as integral portions of its territory, subject to the safeguards above-mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatary shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatary shall if not previously agreed upon by the Members of the League be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

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